



CALIFORNIA ASSOCIATION OF COUNCILS OF GOVERNMENTS

MEMBER AGENCIES

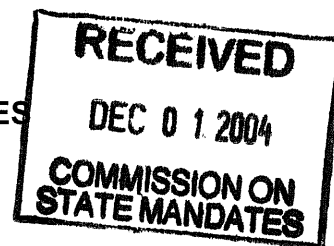
Association of Bay Area Governments
Association of Monterey Bay Area Governments
Butte County Association of Governments
Calaveras Council of Governments
Contra Costa Transportation Authority
Council of Fresno County Governments
Council of San Benito County Governments
El Dorado County Transportation Commission
Humboldt County Association of Governments
Kern Council of Governments
Kings County Association of Governments
Los Angeles County Metropolitan Transportation Authority
Madera County Transportation Commission
Mendocino Council of Governments
Merced County Association of Governments
Orange County Transportation Authority
Placer County Transportation Planning Agency
Riverside County Transportation Commission
Sacramento Area Council of Governments
San Bernardino Associated Governments
San Diego Association of Governments
San Joaquin Council of Governments
San Luis Obispo Council of Governments
Santa Barbara County Association of Governments
Santa Cruz County Regional Transportation Commission
Shasta County Regional Transportation Planning Agency
Southern California Association of Governments
Stanislaus Council of Governments
Transportation Agency for Monterey County
Tulare County Association of Governments
Ventura County Transportation Commission
Western Riverside Council of Governments

CONSTITUTIONAL MEMBERS

California State Association of Counties
League of California Cities

COMMISSION ON STATE MANDATES STATE OF CALIFORNIA

CASE #04-RL-3929-05



REGIONAL HOUSING NEEDS DETERMINATION - COUNCILS OF GOVERNMENTS

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON STATUTES 1980, CHAPTER 1143

CLAIM NO. 3929

DIRECTED BY STATUTES 2004, CHAPTER 227, SECTIONS 109-110
(SEN. BILL NO. 1102)

OPENING BRIEF/COMMENTS BY CALIFORNIA ASSOCIATION OF COUNCILS OF GOVERNMENTS ON BEHALF OF ALL COUNCILS OF GOVERNMENTS WITHIN CALIFORNIA

The California Association of Councils of Governments is the statewide trade association of California's Councils of Governments and the Council of Government counterpart to the League of California Cities and the California State Association of Counties.

It is the position of the California Association of Councils of Governments and all councils of governments that the original decision of the Board of Control should remain in effect and that no changes should be made to the reimbursability of claims submitted by councils of governments.

Answers to each of the four questions posed by Commission staff are as follows:

- Councils of Governments are eligible claimants under Article XIII B, Section 6 of the California Constitution. (see analysis below)
- Statutes 1980, Chapter 1143, imposes a new program on Councils of Governments within the meaning of Article XIII B, Section 6 and there are costs in complying with that mandate, which are mandated by the state pursuant to Section 17514 of

- the government code. (no analysis required as this was settled in original decision)
- Government Code Section 17556, including the existence of fee authority, does not preclude the Commission from finding that any of the statutory provisions imposed costs mandated by the state. (see analysis below)
- No funds have been appropriated for this program by the current 2004-05 state budget and there are no other sources of funding available. (self-evident by lack of appropriation in current year. (Whenever such funds are made available that funding process would supercede mandate reimbursement. It is understood that this reconsideration is only applicable in years in which no other funding is provided.))

Analysis of Councils of Governments as Eligible Claimants

The regional housing needs represents the only “mandate” upon Councils of Governments.

Councils of Governments are created “voluntarily by cities and counties” under the joint powers authority laws. They represent a joint powers agency of cities and counties. (Most represent a single county and the city or cities within that county. Others are multi-county.)

A comment filed by Senator Denise Ducheny indicates that it is her understanding that case law (“Redevelopment Agency of the city of San Marcos, the Commission on State Mandates, et al. (1996) 43 Cal.App.4th 1188 and Redevelopment Agency v. Commission on State Mandates (1997) 55 Cal.App.4th 976) make Councils of Governments ineligible for reimbursements through the state mandate process.

These cases concern redevelopment agencies and not Councils of Governments. Clearly, the cases did not decide directly the issue.

Moreover, there is considerable difference between redevelopment agencies and Councils of Governments. **Redevelopment agencies are created pursuant to specific state laws, which provides a funding source for those activities. Councils of government are created as joint powers agencies with no dedicated state revenues and no taxing authority.**

While not referenced in these court decisions, other court decisions had determined that a redevelopment agency is an agency of the state and not a local government - even though they are governed by local officials, and that all of their activities were carrying out a state purpose as opposed to local purposes.

Other than the Association of Bay Area Governments, all Councils of Governments in California do carry out state functions in transportation. There is state funding provided for most of those functions. It would be a different issue were the Commission to be considering a responsibility that is imposed upon entities that are Councils of

Governments for activities they are carrying out as a transportation planning agency or transportation commission which includes state funding.

In this way, the decision on redevelopment agencies necessarily differentiates between activities that a city carries out when it is functioning as the redevelopment agency (for which those court decisions say it is not eligible for reimbursement) as distinguished from activities it carries out when it is functioning as a city - for which it is eligible for reimbursement.

Analysis of Government Code Section 17556 - Fee Authority


Councils of Governments are created through joint powers agreements. This is, in effect, a contract among the member local governments. Those contracts spell out the powers of Councils of Governments. As with any contract an amendment to a contract must be agreed to by the parties to that contract or in accordance with rules for amending the terms of the agreement that are spelled out in the original agreement itself.

Any other method, including state legislation, would be in violation of both state and federal constitutional prohibitions against impairment of contracts.

Moreover, as indicated by a letter provided by the League of California Cities, it would be invalid for a Council of Governments to impose a fee on a local government and for a local government to collect a fee, which is not being utilized for a local purpose, but for a state purpose. Such a fee would be considered a tax in accordance with other provisions of Articles XIII A & B of the State Constitution.

I have been authorized by the delegates (the governing board of the California Association of Councils of Governments) to prepare and submit these views on behalf of the California Association of Councils of Governments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rusty Selix". The signature is fluid and cursive, with a small mark above the "i" in "Selix".

Rusty Selix,
Executive Director